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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 2704/1997

Appellant : Shankar Pal

Vs.

Respondent: State of Chhattisgarh

Cr. Appeal No. 2703/1997

Appellant : Bhagwan Das

Vs.

Respondent : State of Chhattisgarh

Judgment for consideration

Sd/-
DHIRENDRA MISHRA
Judge

Hon'ble Shri Justice L.C. Bhadoo, J

Sd/-
L.C.BHADOO
Judge

19-3-2007

Pos 19-3-2007

Sd/-
Judge
19-3-2007

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 2704/1997

Appellant : Shankar Pal, son of Haripal alias
Hariram Pal, agcd about 21 years,
Occupation-Student, R/o. village
Ninavali, P.S. Kathond, Distt. Jalon
(U.P.)

Vs.

Respondent: State of Chhattisgarh, through : Police
Station: Jaynagar, Distt. Sarguja (M.P.)

Cr. Appeal No. 2703/1997

Appellant : Bhagwan Das, son of Gutu, aged about
21 years, Occupation- Carpenter, R/o.
village Gharana, P.S. Kathond, Distt.
Jalon (M.P.)

Vs.

Respondent : State of Chhattisgarh, through : Police
Station: Jaynagar, Distt. Sarguja (M.P.)

Coram: Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Dhirendra Mishra, JJ

Present: Shri R.K. Jain, Advocate for the appellants.
Shri Akhil Mishra, Panel Lawyer, for the State.

JUDGMENT

Per Dhirendra Mishra, J

The above two criminal appeals are being disposed of by this common judgment as both the appeals are arising out of judgment dated 28-8-1997, passed in S.T. No. 33/1995 by learned Additional Sessions Judge, Surajpur whereby learned Additional Sessions Judge after holding the appellants guilty for offence of causing homicidal death of Gyan Singh and thereafter dishonestly misappropriating the articles worth Rs. 35,000/- from his house, convicted them under Section 302 read with Section 34 and Section 404 of I.P.C. and sentenced each of the appellants to undergo imprisonment for life and to

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pay a fine of Rs. 300/-, in default of payment of fine to undergo R.I. for three months, R.I. for two years and to pay a fine of Rs. 300/-, and in default of payment of fine, to undergo R.I. for three months respectively.

2. Case of the prosecution, in brief, is that deceased Gyan Singh and the appellants were residents of nearby villages of District Jalon, Uttar Pradesh. Since the wife of Gyan Singh namely Vimladevi (P.W. 5) had gone to participate in the marriage of her sister some two months prior to the date of incident i.e. 6-7-1994, the deceased was alone in his house. At that time, the appellants were also residing with Gyan Singh in his house and were his employees. In the night of incident at about 10.00 p.m. both the appellants and Chandulal (P.W. 8) were seen with deceased Gyan Singh in his verandah, thereafter Gyan Singh was not seen by the neighbours. On 8-7-1994, when Vimladevi (P.W.5) -wife of the deceased returned with her brother Sarnam Singh (P.W. 4) to her house in Vishrampur, she found her house locked from outside. On enquiry she was informed by the nearby grocery shop owners that he is missing since last 2 - 3 days. She broke open the lock and entered into her house. When she found bad smell emanating from inside the house, suspecting that the smell is of rotten potato, she opened the bag of potato and discovered the body of the deceased. Whereupon mere intimation of Ex. P-11 was lodged in Police Out Post Vishrampur. A.S.I. Chitrasen Sharma (P.W. 10) rushed to the place of incident, inquest Ex. P-1 over the dead body of the deceased was prepared in presence of witnesses. The body was sent for autopsy to Government Hospital, Vishrampur vide Ex. P-12, where Dr. D. K Dwivedi conducted post mortem and submitted his report of Ex. P-12-A. On the report of A.S.I. Chitrasen Sharma (P.W. 10), un-numbered crime was registered on 8-7-1994 at 19.30 hrs under Section 302 of I.P.C. vide Ex. P-13 and on the basis of this report, Crime No. 308/1994 under Section 302 of I.P.C.

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was registered on the same date vide Ex. P-14. On the basis of memorandum of Ex. P-2 of Bhagwandas, blood stained Pestle was recovered vide Ex. P-3. Blood stained soil and plain soil from the place of incident, blood stained quilt, damaged lock, blood stained jute bag, two blood stained bed sheets and blood stained pillow cover were taken into possession from the place of incident vide Ex. P-5. Sealed packet containing clothing of the deceased was taken into possession vide Ex. P-6. Memorandum of accused Shankar Pal was recorded as Ex. P-6/10. A briefcase containing Sari of the wife of the deceased, wrist watch and a cash of Rs. 2,200/- was taken into possession from the house of accused Shankar Pal, situated at village Arokhi, P.S. Jalon, U.P. Blood stained articles were sent for chemical examination to Forensic Science Laboratory, Raipur vide Ex. P-15 from where report of Ex. P-16 dated 8-9-1994 was received.

3. After completing the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Surajpur for offence under Section 302 read with Section 34 of I.P.C. who in turn committed the case to the Court of Sessions Judge, Ambikapur and the same was received on transfer by the learned Additional Sessions Judge for trial.

4. Learned Additional Sessions Judge framed charge under Section 302 of I.P.C., in alternative, under Section 302 read with Section 34 of I.P.C., Section 201 and Section 392 of I.P.C. against the appellants who abjured their guilt. The prosecution in order to establish the charges against the appellants examined 13 witnesses, thereafter statements of accused persons under Section 313 of Cr.P.C. were recorded in which they denied the circumstances appearing against them and submitted that the witnesses have falsely implicated them for the purpose of saving themselves. They also submitted that on the date of incident, deceased Gyan Singh, Hakim Singh and

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Chandu Lal were consuming liquor. When Gyan Singh became intoxicated, then Hakim Singh, etc. asked him to consume some more liquor whereupon they locked his house and went away and did not return till late night, thereafter they slept there in the verandah. In the morning, wife of Hakim Singh (P.W. 3) asked them about Gyan Singh, to which they replied that he did not return after going in the night. His wife asked them to go to Balram's house and enquire, whereupon they went Ambikapur and asked from the brother of the deceased about him, Balram came Vishrampur and enquired, however his whereabouts could not be ascertained. He asked them to go to their house and as and when Gyan Singh returns, they shall be calling him back. The accused persons examined Constable Dinesh Kumar in their defence. Learned Additional Session Judge, after hearing the arguments of the respective parties, convicted the appellants and sentenced them as above.

5. Homicidal death of the deceased Gyan Singh is not in dispute. Even otherwise, from perusal of the statement of Dr. D.K. Dwivedi (P.W. 12), who has proved the post mortem of Ex. P-12-A, in which he has found one Lacerated wound at the lateral canthi of left eye 2 x 0.5 cm underlying bone of lateral orbital margin is fractured; one Lacerated wound on the scalp on left frontal region of skull 3 x 1 cm underlying bone is fractured and one contusion on left thigh 2 x 2 cm, reddish coloured, all above injuries are ante mortem, they are reddish in colour, clotted blood is present on face and head and he opined that the cause of death is comma due to head injury and duration of death is about 2 to 3 days, the injuries present over the person of the deceased were caused one day before death, homicidal death of the Gyan Singh is established.

6. There are no eye-witnesses to the incident. Conviction of the appellants is based on circumstantial evidence. The circumstances relied upon by the trial Court for convicting the

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appellants as mentioned in para 14 of the judgment are as under:-

- i. That, both the accused persons were last seen in the company of the deceased on 6-7-1994 at about 10.00 pm in his house and thereafter Gyan Singh was not seen alive.
- ii. That, on 8-7-1994 in the morning, the appellants were spotted with the briefcase of the deceased Gyan Singh near Moti Hotel.
- iii. That, the blood stained pestle was recovered and seized at the instance of the appellant Bhagwan Das.
- iv. That, on the memorandum of Shankar Pal, Sari, Rico watch and Briefcase were seized and the same have been duly identified.

7. Learned counsel for the appellants submits that the circumstances relied upon by the trial Court have not been independently established. The defence of the appellants which emerges from the cross-examination of the witnesses and their statements under Section 313 of Cr.P.C. has not been considered. Recovery on the basis of memorandum of the appellants was doubtful and, therefore, the circumstances of recovery of pestle, briefcase and other articles could not be relied upon for convicting the appellants. On the basis of these circumstances, the appellants could not have been convicted and benefit of doubt ought to have been given to appellants. It is submitted that disclosure statement of the accused does not bear their signature or thumb impression which renders such statement unreliable. Reliance is placed in the case of **Jackaran Singh -v- State of Punjab** reported in **AIR 1995 SC 2345**.

8. On the other hand, learned counsel for the State supports the judgment of the trial Court.

9. We have heard the learned counsel for the parties. We have perused the impugned judgment as also the material available on record.

10. So far as the first circumstance is concerned, P.W. 3 Hakim Singh has stated that his house and house of Gyan Singh is adjacent. Two months prior to 6-7-1994, wife and daughter of Gyan Singh had gone to Arokhi village of U.P. Appellants were servants of Gyan Singh, they were serving Gyan Singh some 2-3 months prior to the date of incident. They resided in the same house. On 6-7-1994 at about 9.00 p.m. when went out to pass urine, he saw accused persons consuming liquor with Gyan Singh and Chandulal (P.W. 8). He went there on being called by Gyan Singh and sat there for 10 minutes. In the meanwhile, Chandulal (P.W. 8) left them for his house. Gyan Singh asked accused persons to cook food and thereafter he went to his house. In the morning, he saw both the accused-persons sleeping on Verandah. On enquiry, both of them said that he is missing since 11.00 p.m. At 9.00 a.m. his wife asked the accused persons to go to younger brother Balram and enquire whereabouts of Gyan Singh whereupon both of them went to Ambikapur and returned at about 6.00 p.m. along with one Pintu, however they did not say anything about Gyan Singh and told that Balram (P.W.7) has asked them to resume the business of *Fulki* and he shall be coming in the morning and enquire about his brother. On 7-7-1994, he saw the accused persons and their companion sleeping in the Verandah. On 8-7-1994, at about 5.00 a.m. he found them sleeping there however, when he was proceeding for duty at about quarter to seven, he saw all the three standing near Moti Hotel. Accused Shankar Pal was carrying *attachi* of Gyan Singh. On enquiry, they said that they were proceeding for

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Katni, however this witness asked that one of them should go to Katni and other to go to his brother to enquire about Gyan Singh. However, Shankar Pal and Bhagwan Das said that they were going to Katni and they shall send one person to Ambikapur. He further stated that in the evening at about 5.00 p.m. when he returned from the duty, he learnt that dead body of Gyan Singh was recovered from a gunny bag inside the house of Gyan Singh. In the cross-examination, this witness has stated that he was regular visitor of Gyan Singh's house. Accused Bhagwansingh kept his belongings in the first room. They cook their meals in Verandah as well as in the first room, they slept in the Verandah. He had denied the suggestion that the accused persons did not take liquor on 6-7-1994, they were in the house of Gyan Singh and they have also denied that Gyan Singh had sent accused Bhagwan Das to Ambikapur to fetch kerosene or he returned Ambikapur on 7-7-1994 in the morning. In para 25, this witness has denied the suggestion that accused Bhagwan Das had obtained leave from Gyan Singh for going to U.P. and has stated that Bhagwan Das had returned Vishrampur 2 days before the incident. This witness has further denied the suggestion that his wife had illicit relations with Gyan Singh. On 6-7-1994 after departure of Chandulal, Gyan Singh went with him and he along with his wife murdered Gyan Singh in their house and in order to conceal the dead body of Gyan Singh, he sent the accused persons to Ambikapur through his wife and thereafter took out the key from the pocket of the deceased and opened the lock and conceal the dead body of Gyan Singh in a gunny bag in Gyan Singh's house. P.W. 6 Shyamadevi, wife of Hakim Singh has also stated that she saw the accused persons and Gyan Singh consuming liquor along with 4 persons at 9.30 pm on the date of incident. On the next morning, she found the house of Gyan Singh locked. At about 7.30 am she saw Shankar and Bhagwan Das coming out of the house of Gyan Singh and on

enquiry they said that they are going to search Gyan Singh. She also stated that accused Shankar was carrying a suitcase, thereafter the accused persons did not return. On the 3rd day when the wife of Gyan Singh returned, she told her that Gyan Singh is missing since last 2 days. Since the house was locked, she was sitting in the Verandah, she got her house opened by her brother and discovered the dead body. In paragraph 18 of her statement, she has again stated that the house of Gyan Singh was locked since evening. The accused persons did not return as they had already left in the morning. P.W. 8 Chandulal has stated that he along with Gyan Singh, accused persons and Hakim Singh were consuming liquor at about 9.30 pm in the night in the house of Gyan Singh, however he left them at 10.00 pm for his house leaving both the accused, Gyan Singh and Hakim Singh (P.W. 3). This witness has also stated that police also detained him and later on he came to know that the accused persons were not in the house and the house of Gyan Singh was locked though they resided in the house of Gyan Singh. He has further stated that he was detained on 8th and released on 9th by the Police. The accused persons had come to his house in his absence on 7th. He has also stated that his wife told him that the accused persons had come to his house in search of Gyan Singh.

11. If we scrutinize the statement of these three witnesses, we find that there are noticeable discrepancies in their versions. Whereas P.W.3 Hakim Singh has stated that at 9.00 pm he saw that 4 persons- Gyan Singh, Bhagwan Das, Shankar Pal and Chandulal were consuming liquor together. He went on being called by Gyan Singh and sat there for only 10 minutes and in the meanwhile, Chandulal left. Shyamadevi (P.W. 6) has stated that at about 9.30 pm she saw both the accused persons, Gyan Singh and 4th person consuming liquor, whereas Chandulal (P.W. 8) has stated that at 9.30 pm he, accused persons, Gyan Singh and Hakim Singh were consuming liquor, however he left

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them at 10.00 pm. Similarly, P.W. 3 Hakim Singh has stated that on being asked by his wife, the accused persons went to Ambikapur to enquire about Gyan Singh from his brother Balram (P.W. 7) and both of them returned at about 6.00 pm along with one Pintu and they slept in the Verandah in the night of 7th and went away on 8th July 1994. At that time, they were carrying the *attachi* of Gyan Singh, whereas Shyamadevi (P.W. 6) in paragraph 2 of her statement has stated that in the next morning, when she came out, she found the house of Gyan Singh locked from outside. On the same morning at about 7.30 am she saw Bhagwan Das and Shankar Pal coming out of the house of Gyan Singh and thereafter they did not return and at that time, accused Shankar Pal was carrying suitcase. On her enquiry, they said that they were going to search Gyan Singh. It is not in dispute that the appellants being servants of the deceased were residing in his house and used to sleep in Verandah of Gyan Singh. Witnesses have also stated that they used to cook food either in the Verandah or in the first room. Even on 6th and 7th night, they slept in the Verandah. They also went in search of Gyan Singh to his brother Balram's house at Ambikapur as also to the house of Chandulal and thereafter they returned and slept in the Verandah of Gyan Singh. As per post mortem report, opinion of Dr. D.K. Dwivedi (P.W. 12) was that the time of death was 2 to 3 days prior to the date of examination i.e. 9-7-1994. He has further opined that injuries were of one day before the death. Thus if the opinion of the Doctor D.K. Dwivedi is accepted, then the death of Gyan Singh occurred between 6th to 7th of July, 1994 and the injuries were sustained by him between 5th to 6th July, 1994. It is highly improbable that the appellants after causing grievous injuries would have packed the injured Gyan Singh in a gunny bag and concealed him inside his house and locked the door from outside and slept in the Verandah waiting for his death. It is all the more improbable that in these

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circumstances, they would have returned to the place of incident on the following day and slept in the night in the Verandah.

12. So far as 2nd and 4th circumstances that the appellants were spotted with the suitcase of deceased Gyan Singh in the morning of 8-7-1994, is concerned, in this regard also, there is discrepancy in the statements of Hakim Singh (P.W. 3) and his wife Shyama Devi (P.W. 6). Whereas Shyamadevi (P.W. 6) claims to have seen the accused persons leaving the house of Gyansing on 7-7-1994 itself in the morning along with suitcase and thereafter they did not return, Hakim Singh (P.W. 3) claims that on 7th July 1994, they went Ambikapur and returned in the evening at 6 pm and slept in the Verandah and thereafter they left with the suitcase on 8-7-1994. So far as recovery of suitcase on the memorandum of Shankar Pal is concerned, the memorandum of Ex. P-6 does not bear the signature of Shankar Pal. More over, P.W. 9 Shiv Govind, the witness of memorandum statement, has stated that accused Bhagwan Das had made disclosure statement before him to the police regarding Attachi and Sari, therefore in view of the statement of this witness, recovery of suitcase at the instance of Shankar Pal loses its significance.

13. The other circumstance relied upon by the prosecution that on the disclosure statement Ex. P-2 of Bhagwan Das, weapon of offence pestle was recovered from the house of Gyan Singh is concerned, firstly memorandum of Ex. P-2 does not bear the signature of Bhagwan Das. Narisuddin, the witness of memorandum of Ex. P-2 has stated that Bhagwan Das had given disclosure statement in his presence and in pursuance of same, pestle was discovered from a corner of the house of Gyan Singh and seized vide Ex. P-3. In para 7, this witness stated that the seizure was effected by the police from the house of Gyan Singh on the date when wife of Gyan Singh returned from

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her house. In view of the fact that the disclosure statement of Ex. P-2 does not bear the signature of the accused Bhagwan Das and the fact that there is discrepancy in the statement of Nasiruddin with regard to date on which the seizure was made, it would not be safe to consider the circumstance of seizure of pestle on the memorandum of appellant Bhagwan Das to be a circumstance sufficient to draw an inference regarding the guilt of appellants. We rely upon the judgment of Supreme Court in the matter of Jackaran Singh (supra) wherein it is held that absence of signature or thumb impression of the accused in the disclosure statement renders such statement unreliable.

14. The fact that the time of death of Gyan Singh has been assessed between 6th to 7th July, 1994 and dead body was recovered in the evening of 8th July, 1994 and further that admittedly the appellants were absent from the place of incident on 7th July, 1994 for the whole day, the possibility of other person committing the murder and dumping the body of the deceased in the meanwhile cannot be ruled out.

15. On the basis of the aforesaid discussions, we are of the considered opinion that the prosecution has not been able to prove the charge against the appellant on the basis of circumstantial evidence. The circumstances, relied upon, have not been independently proved. The prosecution has not been able to establish the circumstances unerringly pointing towards the guilt of the accused-appellants and even they do not form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

16. In the result, both the appeals are allowed. The impugned judgment of conviction and order of sentence is set aside. Appellants Bhagwan Das and Shankar Pal are acquitted of the charge under Section 302 read with Section 34 of I.P.C. and

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Section 404 of I.P.C. It is stated that that they are in detention since 12-7-1994 and 13-7-1994 respectively. They be set at liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

20-3-2007

Sd/-
DHIRENDRA MISHRA
Judge